IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

MFA.No. 1249 of 2000()

WCC.106/1992 of COMMISSIONER FOR WORKMEN'S COMPENSATION, ERNAKULAM . DT.29.9.2000.
.....

APPELLANT: 2ND OPPOSITE PARTY

THE NEW INDIA ASSURANCE CO.LTD.,
NOW REPRESENTED BY ITS DEPUTY MANAGER,
REGIONAL OFFICE, M.G.ROAD,
KOCHI.11.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: APPLICANT AND 1ST OPPOSITE PARTY
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1. S.BALAKRISHNA PILLAI, SANTHI NIVAS,
MOKKAD P.O. VIA,
CHENGAMANAD, ALUVA.

2. THE TRANSFORMERS AND ELECTRICALS,
KERALA LTD., ANGAMALY P.O.,
REP.BY ITS CHAIRMAN AND MANAGING DIRECTOR.

BY ADV. SRI.A.P.CHANDRASEKHARAN
SRI.PUSHPARAJAN KODOTH
SRI.M.KRISHNAKUMAR(MOHANKUMAR ASSOCIATES
SRI.K.JAYESH MOHANKUMAR
SRI.M.PATHROSE MATHAI
SRI.SAJI VARGHESE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A NO.1249/2000

ORDER ON CMP. NO.7253/2000 IN MFA.NO.1249/2000

DISMISSED

04.07.2007

SD/- J.B.KOSHY, JUDGE
SD/- K.P.BALACHANDRAN, JUDGE

/TRUE COLPY/

P.A. TO JUDGE

tss

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1249 OF 2000 ()

Dated this the 4th day of July, 2007

J U D G M E N T

KOSHY,J.

The 1st respondent filed an application under Section 22 of the Workmen's Compensation Act contending that while he was employed as a Foreman by the 2nd respondent an accident occurred in the course of employment by which he suffered personal injuries. Injuries suffered was that he lost two teeth. He was given medical expenses and Rs.718.42 towards accident benefits by the 2nd respondent. According to him, he suffered loss of earning capacity which was not granted and therefore he claimed compensation. But 2nd respondent filed written statement stating that even after the accident he was employed and his salary was not affected and therefore there is no loss of earning capacity. It was further submitted a personal accident policy was taken from appellant Insurance company covering all the employees. Accordingly appellant

Insurance company was impleaded before the Commissioner.

2. Mainly two contentions were raised by the Insurance company. First contention is that no Workmen's Compensation policy was taken but only a Group personal accident policy was taken by the 2nd respondent and therefore petitioner is not liable to pay compensation under the Workmen's Compensation Act. Secondly, it was contended that since 1st respondent was continuing to work, there is no loss of earning capacity. Under the personal accident policy, all types of compensation payable under the Workmen's Compensation Act need not be paid by the Insurance company. As per the policy compensation has to be granted for disablement arising out of accident of all persons covered under the Group accident policy on the basis of the medical certificate. Here 1st respondent worker was covered under that policy and the disablement was assessed by the Medical Board at 10%. Therefore liable to pay compensation for 10% disablement even if 1st respondent's salary was not reduced by the employer. Since there is 10% personal disability and

considering the nature of disability, nature of job etc. loss of earning capacity also can be assessed only at 10%. Therefore the compensation is payable only for 10% disability and consequent loss of earning capacity. It is half of the amount awarded by the Tribunal, that is, Rs.7,990/- with 12% interest from the date of accident, that is, 18.6.1991 till 7.11.2000, date of deposit. Amount due to the 1st respondent shall be disbursed to the 1st respondent and excess amount deposited shall be refunded to the appellant Insurance company. Accordingly this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1249 OF 2000 ()

J U D G M E N T

4th July, 2007